No. 16-32

IN THE

Supreme Court of the United States

KINDRED NURSING CENTERS LIMITED PARTNERSHIP, *ET AL.*,

Petitioners,

v.

JANIS E. CLARK, *ET AL.*,

Respondents.

On Writ of Certiorari to the Supreme Court of Kentucky

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN, INC., IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 1

ARGUMENT 3

I. The Kentucky court applied ordinary principles of contract law in determining that whether nursing-home arbitration agreements are validly formed depends on whether the agents who executed them had authority to do so. 3

II. The FAA does not impliedly preempt the court's application of Kentucky agency-law principles to determine the scope of authority conferred by powers of attorney. 8

A. Kindred's argument depends on principles of implied obstacle preemption. 8

B. General Kentucky agency principles pose no obstacle to achievement of the FAA's objectives. 9

C. The Kentucky court's application of agency principles to the powers of attorney in this case creates no obstacles to the FAA's purposes. 10

1. The state court's holding with respect to Wellner's power of attorney reflected its reasonable interpretation of the document's language 11

2. The Kentucky court's interpretation of the Clark power of attorney is fully consistent with the FAA's fundamental policy that arbitration is a matter of consent..... 12

CONCLUSION 18

TABLE OF AUTHORITIES

Cases: **Page(s)**

14 Penn Plaza LLC v. Pyett,
556 U.S. 247 (2009) 15, 16

Altria Group, Inc. v. Good,
555 U.S. 70 (2008) 9

Am. Health Care Ass'n v. Burwell,
2016 WL 6585295 (N.D. Miss. Nov. 7, 2016),
appeal pending, No. 17-60005 (5th Cir.) 5

AT&T Mobility LLC v. Concepcion,
563 U.S. 333 (2011) 3, 4

Button v. Drake,
195 S.W.2d 66 (Ky. Ct. App. 1946) 12

Chamber of Commerce of U.S. v. Whiting,
563 U.S. 582 (2011) 9

DIRECTV, Inc. v. Imburgia,
136 S. Ct. 463 (2015) 4

First Options of Chicago, Inc. v. Kaplan,
514 U.S. 938 (1995) 3, 7, 16, 17

Granite Rock Co. v. Int'l B'hood of Teamsters,
561 U.S. 287 (2010) 3, 7, 14

Hines v. Davidowitz,
312 U.S. 52 (1941) 8

Howsam v. Dean Witter Reynolds, Inc.,
537 U.S. 79 (2002) 16

Lorillard Tobacco Co. v. Reilly,
533 U.S. 525 (2001) 9

Marmet Health Care Ctr., Inc. v. Brown,
132 S. Ct. 1201 (2012) 6

Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.,
460 U.S. 1 (1983) 3

Ping v. Beverly Enters., Inc.,
376 S.W.3d 581 (Ky. 2012) 9, 10

Rent-A-Center, West, Inc. v. Jackson,
561 U.S. 63 (2010) 16

Rodriguez v. United States,
480 U.S. 522 (1987) 16

Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ., 489 U.S. 468 (1989) 3, 13, 15

Wright v. Universal Maritime Serv. Corp.,
525 U.S. 70 (1998) 15, 16, 17

Wyeth v. Levine,
555 U.S. 555 (2009) 9, 17

Statutes:

9 U.S.C. § 2 ..... 3, 14

Other:

Am. Arbitration Ass'n, *Healthcare Policy Statement* (2003), https://www.adr.org/aaa/ShowPDF?doc=ADRSTG_011014 5

Am. Bar Ass'n, Comm'n on Law & Aging, *Policy on LTC Facility Arbitration Agreements 111B* (Feb. 16, 2009), http://www.americanbar.org/content/dam/aba/directories/policy/2009_my_111b.authcheckdam.pdf 5

Dep't of Health & Human Servs., *Final Rule: Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities*, 81 Fed. Reg. 68688 (Oct. 4, 2016) 4, 5

Restatement (Third) of Agency § 2.02 & comment h 13

INTEREST OF AMICUS CURIAE[1]

Public Citizen, Inc., is a consumer advocacy organization that appears on behalf of its members and supporters nationwide before Congress, administrative agencies, and the courts. Public Citizen works on a wide range of issues, including enactment and enforcement of laws protecting consumers, workers, and the public. Public Citizen has a longstanding interest in issues concerning the enforcement of mandatory predispute arbitration agreements, and its attorneys have represented parties and amici curiae in many cases involving such issues in this Court and other federal and state courts.

SUMMARY OF ARGUMENT

Predispute arbitration agreements between nursing homes and other long-term care facilities and their patients, entered into at the time of a patient's admission to a facility, have proliferated and become subjects of controversy in recent years. Although some critics of those agreements, including the Centers for Medicare and Medicaid Services (CMS) of the United States Department of Health and Human Services, have objected to them on policy grounds, the Kentucky Supreme Court in this case expressed no such policy preference. As required by the Federal Arbitration Act (FAA), the court recognized that an arbitration agreement between a nursing home and a resident, if properly formed under state law, is valid and enforceable unless there is a generally applicable contract-law basis for setting it aside.

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[1] This brief was not authored in whole or part by counsel for a party. No one other than amicus curiae made a monetary contribution to preparation or submission of this brief. Letters of consent to its filing from counsel for all parties are on file with the Clerk.

In this case, the question whether the arbitration agreements at issue were validly formed turned on an antecedent issue of Kentucky agency law—whether the powers of attorney under which the patients' representatives acted when executing the claimed arbitration agreements authorized entry into such agreements. To answer that question, the Kentucky Supreme Court applied Kentucky agency-law principles limiting an agent's powers to those expressly conferred in a power of attorney, read in light of the agent's good-faith obligation to conform to a reasonable understanding of the principal's intentions. Based on those principles, the court held that the powers of attorney in this case did not confer authority to enter into predispute arbitration agreements.

Although the FAA does not, by its terms, address the scope of agents' authority to enter into contracts, petitioners Kindred Nursing Centers, *et al.*, argue that the Kentucky court's application of agency principles in this case is impliedly preempted by the FAA because the court's ruling stands as an obstacle to the fulfillment of the FAA's objectives. Kindred does not carry the heavy burden of demonstrating such preemption. The Kentucky court's attempt to determine the reasonable scope of the authority granted under the powers of attorney at issue presents no barrier to the FAA's core objective of fostering enforcement of arbitration agreements consensually entered into by both parties. Rather, the court's application of agency principles reinforces the FAA's central purposes by ensuring that arbitration agreements genuinely reflect the assent of those against whom they are enforced.

ARGUMENT

I. The Kentucky court applied ordinary principles of contract law in determining that whether nursing-home arbitration agreements are validly formed depends on whether the agents who executed them had authority to do so.

The FAA provides that written agreements to arbitrate disputes are enforceable, subject to legal principles that govern enforcement of other contracts. 9 U.S.C. § 2; *see AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). Although the Court has characterized the FAA as embodying a "liberal federal policy favoring arbitration," *id.* (quoting *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)), that policy encompasses only arbitration contractually agreed to by the parties. *See Granite Rock Co. v. Int'l B'hood of Teamsters*, 561 U.S. 287, 299 (2010). Thus, the "first principle" of federal law under the FAA is not that arbitration is favored, but that "[a]rbitration is strictly 'a matter of consent,' and thus 'is a way to resolve those disputes—*but only those disputes*—that the parties have agreed to submit to arbitration.'" *Id.* (quoting *Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ.*, 489 U.S. 468, 479 (1989), and *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995) (emphasis added in *Granite Rock*)).

The FAA does not itself supply standards determining whether there is a valid agreement to arbitrate between two parties. Rather, that issue is generally determined in the first instance by state-law principles that govern how contracts are formed, whom they bind, how they are interpreted, and what defenses may exist to their enforcement. *See, e.g.*, *Concepcion*, 563 U.S. at 339–40; *First Options*, 514 U.S. at 944; *Volt*, 484 U.S. at 474,

484. This Court has held, however, that state contract-law principles are preempted by the FAA if they "prohibit[] outright the arbitration of a particular type of claim" or are "applied in a fashion that disfavors arbitration." *Concepcion*, 563 U.S. at 341; *see, e.g.*, *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463, 469–71 (2015).[2]

Application of state-law contract principles to predispute arbitration agreements allegedly entered into when a patient is admitted to a long-term care facility or nursing home often poses difficult questions of unconscionability under state law. The circumstances under which such agreements are signed by patients or their representatives, who are often family members, make informed, voluntary decisions particularly unlikely. Such agreements are typically entered into "when the would-be resident is physically and possibly mentally impaired, and is encountering such a facility for the first time." Dep't of Health & Human Servs., *Final Rule: Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities*, 81 Fed. Reg. 68688, 68792 (Oct. 4, 2016). Admission to such a facility inevitably comes at "an extremely stressful time for the residents and their families," *id.* at 68793, and in circumstances in which "there is unequal bargaining power between the residents and their representatives and the facilities." *Id.* at 68797. "The resident's immediate need for nursing care and lack of experience with arbitration means that

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[2] Disagreement remains on the Court as to whether the Act applies to state-court proceedings or has preemptive effect with respect to principles of contract law applied in such proceedings. *See Imburgia*, 136 S. Ct. at 472 (Thomas, J., dissenting). Under the view that "the FAA does not require state courts to order arbitration," *id.*, the Kentucky Supreme Court's holding that the FAA does not require arbitration of this case would have to be affirmed.

residents are unlikely to ask for time to seek legal advice concerning the agreement for binding arbitration." *Id.* As a result, "meaningful or informed consent for pre-dispute arbitration is often lacking." *Id.* at 68796.

These considerations recently led CMS, the federal agency responsible for oversight of the Medicare and Medicaid programs that fund care at many nursing homes, to conclude that, when entered into at the time of admission of a patient to a long-term care facility, "pre-dispute arbitration clauses are, by their very nature, unconscionable" because "it is virtually impossible for a resident or their surrogate decision-maker to give fully informed or voluntary consent to such arbitration provisions." *Id.* at 68972. In line with recommendations of the American Bar Association and a policy adopted by the American Arbitration Association against the use of pre-dispute arbitration agreements in such settings, CMS accordingly issued a rule prohibiting the use of predispute arbitration agreements by long-term care facilities that receive Medicaid or Medicare funding.[3] Although the CMS rule has been challenged in court, the challenge centers more on the extent of CMS's authority than on the validity of its factual findings and conclusions.[4]

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[3] *See* Am. Bar Ass'n, Comm'n on Law & Aging, *Policy on LTC Facility Arbitration Agreements 111B* (Feb. 16, 2009), http://www.americanbar.org/content/dam/aba/directories/policy/2009_my_111b.authcheckdam.pdf; Am. Arbitration Ass'n, *Healthcare Policy Statement* (2003), https://www.adr.org/aaa/ShowPDF?doc=ADRSTG_011014.

[4] A federal district court preliminarily enjoined the CMS rule on November 7, 2016, and CMS has appealed. *See Am. Health Care Ass'n v. Burwell*, 2016 WL 6585295 (N.D. Miss.), *appeal pending*, No. 17-60005 (5th Cir.).

Whatever authority CMS may have to issue such a rule, this Court's FAA preemption rulings hold that a state court cannot categorically deny enforcement to agreements to arbitrate particular types of disputes, such as those between patients and nursing homes, but must consider their enforceability based on general contract-law principles, such as unconscionability. *See Marmet Health Care Ctr., Inc. v. Brown*, 132 S. Ct. 1201, 1203–04 (2012). In this case, the Kentucky Supreme Court recognized exactly that: It held that a validly formed predispute arbitration agreement between a nursing-home resident and a nursing home is "enforceable as written under both the Kentucky Uniform Arbitration Act (KUAA) ... and the Federal Arbitration Act (FAA) ... with respect to the decedents' claims for personal injury and statutory violations." Pet. App. 24a. The court further held—likewise in accordance with the FAA's first principle of consent—that the agreements could be enforced only if they were validly formed under Kentucky law, because "[u]nless an arbitration agreement was validly formed, there is no arbitration agreement to be enforced." *Id.* at 25a.

The presence of significant contract formation issues in this case stems from a characteristic of nursing-home admissions that is distinct from the circumstances in most settings where corporations seek to bind consumers or workers to predispute arbitration agreements: Nursing-home arbitration agreements are often entered into not by the individual subject to them, but by a representative acting pursuant to a power of attorney or other authorization because of the individual's own diminished capacity. In the cases here, for example, the claimed arbitration agreements were signed by relatives of the now-deceased nursing home residents as attor-

neys-in-fact under powers of attorney previously executed by the decedents.

In such a situation, application of "ordinary state-law principles that govern the formation of contracts" to determine "whether the parties agreed to arbitrate," *First Options*, 514 U.S. at 944, requires consideration of whether the person executing the contract had authority to bind the principal under state law.[5] The Kentucky Supreme Court here followed exactly that approach, holding that the contracts would be enforceable if the principals conferred authority to sign such agreements under the powers of attorney at issue, but would not be enforceable if the powers of attorney did not confer such authority. That holding, as this Court's decisions require, reflected the generally applicable principles of contract law that a person's assent is required for the enforcement of any contract, and that assent may be provided by an agent acting within the scope of authority conferred by a principal.

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[5] A separate issue sometimes arises in the nursing-home context when a care provider asserts that plaintiffs who are not parties to an arbitration agreement are bound by it when they assert wrongful-death claims. The Kentucky court's resolution of that separate question in this case, which is not challenged in this Court, is based on the principles that, under Kentucky law, wrongful death claims belong to survivors, not to the decedent, and that the survivors are not parties to the claimed arbitration agreement between the decedent and the nursing home. Pet. App. 8a–11a. That decision is fully consistent with the fundamental FAA principle that parties are bound to arbitrate only those issues that *they* have agreed to arbitrate. *Granite Rock*, 561 U.S. at 299.

II. The FAA does not impliedly preempt the court's application of Kentucky agency-law principles to determine the scope of authority conferred by powers of attorney.

The state court analyzed the question whether the powers of attorney at issue conveyed authority to agree to binding predispute arbitration agreements under principles of Kentucky agency law, under which the scope of an attorney-in-fact's authority depends on the powers expressly set forth in a written power-of-attorney instrument. Kindred argues that the FAA preempts the Kentucky court's application of this agency-law principle to the particular facts here because the court read the powers of attorney at issue in a way that disfavored arbitration. Kindred has not carried its burden of demonstrating preemption on such a theory.

A. Kindred's argument depends on principles of implied obstacle preemption.

The FAA clearly does not *expressly* preempt a state court's construction of a power of attorney to determine whether or not it authorizes an agent to assent to arbitration on a principal's behalf, nor can there be a direct conflict between the FAA's terms and a decision concerning scope of agency. By its express terms, the FAA requires only that contracts to arbitrate be enforced, and says nothing about antecedent determinations of agency authority that affect whether any contract binding a particular person has been entered into. At most, Kindred's argument is that the FAA *impliedly* preempts principles of state agency law that "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

Such claims, however, "do[] not justify a 'freewheeling judicial inquiry into whether a state [law] is in tension with federal objectives.'" *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 607 (2011) (citation omitted). Indeed, at least one member of this Court has questioned whether such implied preemption analysis comports with our constitutional structure. *See Wyeth v. Levine*, 555 U.S. 555, 583 (2009) (Thomas, J., concurring in the judgment). In any event, any consideration of implied preemption requires particular caution when the subject is a field of "traditional state regulation." *Altria Group, Inc. v. Good*, 555 U.S. 70, 77 (2008) (quoting *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 541-42 (2001)). Without question, agency law is such a field.

B. General Kentucky agency principles pose no obstacle to achievement of the FAA's objectives.

Kindred does not contend that the general principle of agency law applied here by the Kentucky Supreme Court—that an agent's authority under a power of attorney must be declared expressly, and that authority to enter into any particular type of transaction must be construed by reference to the types of transactions expressly authorized as well as the agent's duty to act in good faith—is preempted. That principle by itself poses no obstacle to the purposes and objectives of the FAA, let alone a sufficient obstacle to demonstrate a "clear and manifest purpose of Congress" to supersede it. *Altria*, 555 U.S. at 77.

Similarly, Kindred does not argue that the Kentucky court's application of that basic agency-law principle in its prior decision in *Ping v. Beverly Enterprises, Inc.*, 376 S.W.3d 581 (Ky. 2012), reflected hostility to arbitration or posed an obstacle to achievement of the FAA's

purposes. Nor could Kindred plausibly make any such assertion: *Ping* held that a power of attorney that expressly conferred authority with respect to medical care decisions, financial matters involving the receipt and expenditure of funds, and real estate transactions did not confer authority to enter into a predispute arbitration agreement that did not fall within the scope of any of those three areas of authority. That holding involves no hostility toward or discrimination against arbitration and poses no barrier to the formation of consensual arbitration agreements. *Ping* rests on the neutral principle that the language of a power of attorney must be such that the agent "reasonably could have understood her authority under the power of attorney" to extend to the subject-matter of a particular transaction or contract entered into on the principal's behalf. *Id.* at 592.

C. The Kentucky court's application of agency principles to the powers of attorney in this case creates no obstacles to the FAA's purposes.

Kindred's attempt to portray the Kentucky Supreme Court's application of the fundamental principles of Kentucky agency law in this case as somehow different from the application of those principles in *Ping*, and as imposing a true obstacle to fulfillment of the FAA's purposes, is unpersuasive. Here, as in *Ping*, the court reasonably construed the language of the powers of attorney, and that construction is consistent with the fundamental FAA policy that arbitration is a matter of consent.

1. The state court's holding with respect to Wellner's power of attorney reflected its reasonable interpretation of the document's language.

According to Kindred, the Kentucky court's holding rested entirely on an "explicit-reference rule" under which arbitration agreements, alone among the kinds of contracts an agent might enter into, will be considered unauthorized unless a power of attorney specifically authorizes them. *See* Kindred Br. 17. Kindred's argument elides differences between the language of the two powers of attorney at issue here. The Wellner power of attorney specified particular subjects with respect to which the attorney-in-fact was authorized to contract, none of which on their face involved arbitration. The Kentucky Supreme Court's holding that the instrument did not authorize entry into an arbitration agreement did not rest on anything that could remotely be characterized as an "express-reference rule," but instead was based on the court's conclusion that authority to enter into contracts with respect to "real and personal property, including stocks, bonds and insurance" did not confer authority to enter into a predispute arbitration agreement with a nursing home. Pet. App. 36a–38a.[6]

Kindred argues that the court's holding must reflect hostility to arbitration because an arbitration agreement relates to legal claims, and the Kentucky court acknowledged that, technically, "choses in action are personal

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[6] The court also held that language empowering the attorney-in-fact to "institute legal proceedings" did not authorize a predispute arbitration agreement. Pet. App. 35a. Kindred does not appear to suggest that that straightforward interpretation conflicts in any way with the FAA.

property." *Id.* at 36a. Even as a technicality, Kindred's argument is deficient, because a claim that has not yet come into being is not property of any kind. *See Button v. Drake*, 195 S.W.2d 66, 69 (Ky. Ct. App. 1946) ("A chose in action has been defined as a personal right not reduced into possession, *but recoverable by a suit at law.*") (emphasis added). More importantly, the Kentucky court's decision reflects that the authority to enter into contracts concerning real and personal property is not reasonably understood to encompass an agreement that does not control any property rights, but instead impairs important procedural rights in possible future litigation. Kindred's argument does nothing to establish that that interpretation reflects a principle of law that poses an obstacle to arbitration. Not every difference of opinion over the interpretation of a legal instrument presents a substantial issue of federal law under the FAA.

2. **The Kentucky court's interpretation of the Clark power of attorney is fully consistent with the FAA's fundamental policy that arbitration is a matter of consent.**

Kindred's arguments with respect to the Clark power of attorney are no more persuasive in conjuring up an obstacle to the FAA's purposes. The Kentucky court stated that although the Clark instrument's generic language conferring broad authority to enter into contracts and take other actions might literally encompass an arbitration agreement (or, indeed, anything else in the world that a person might do), "[t]here are limits to what we will infer from even the broadest grants of authority that might be stated in a power-of-attorney instrument." Pet. App. 41a. The court held that it must "limit[] the tolerable range of inferences we would allow from such a universally broad grant." *Id.*

Accordingly, the court held that it was not reasonable to infer a grant of the power to enter into a predispute arbitration agreement or other similarly consequential agreements in the absence of some more explicit expression of that authority. The decision is entirely in accord with the generally applicable, neutral principles of agency law that an agent's authority extends to what the agent would reasonably understand to be within the scope of authority inferable from the principal's manifestations of intent, and that the consequences of a particular transaction must be considered in determining whether that transaction reasonably fits within the expectations and intentions of the principal. *See* Restatement (Third) of Agency § 2.02 & comment h.

Even if the decision were properly understood as creating an "explicit-reference rule" that treated authority to enter into arbitration agreements differently from authority to enter into other agreements comparable in terms of their effect on the principal's interests, it would pose no genuine obstacle to achievement of the FAA's objectives. As explained above, the fundamental policy of the FAA is the enforcement of *consensual* arbitration agreements: "Arbitration under the Act is a matter of consent, not coercion." *Volt*, 489 U.S. at 479. Far from being an obstacle to that policy, the Kentucky court's construction of the Clark power of attorney directly advances it.

The consent principle in the typical case involving a bilateral contract personally executed by the party against whom enforcement is sought is straightforward: If the contract applies to the dispute at issue, meets general contractual requisites such as consideration, and is not subject to any contractual defense against enforcement, it will be "enforced according to [its] terms." *Id.* at

479. That principle does not, and indeed cannot, require arbitration under a contract that says nothing about arbitration. After all, the FAA requires only enforcement of a "written provision" to arbitrate. 9 U.S.C. § 2. This Court has not, to our knowledge, required a party to arbitrate under a contract that was *silent* with respect to arbitration.

As this Court stated in *Granite Rock*, all of the Court's opinions have "compelled arbitration of a dispute only after the Court was persuaded that the parties' arbitration agreement was validly formed and that it covered the dispute in question and was legally enforceable." 561 U.S. at 300. *Granite Rock* reflects this Court's insistence that "policy considerations" cannot serve "as a substitute for party agreement" to arbitrate, as well as recognition that the FAA's policies can require arbitration only when "arbitration of a particular dispute is what the parties intended because their *express* agreement to arbitrate was validly formed." *Id.* at 303 (emphasis added).

At most, the Kentucky court's construction of the Clark power of attorney simply applies agency-law principles to achieve the same ends as the FAA's own prerequisite of an express written agreement to arbitrate—that is, to ensure that binding a party to arbitrate reflects his or her actual assent to the substitution of arbitral procedures for the due process, right to a jury, and access to the courts that otherwise are required for resolution of a legal claim. Absent such assent, arbitration would threaten to become a matter of coercion, not consent. Far from frustrating the FAA's policies, therefore, the decision below advances them.

To be sure, the effect of the court's decision in this case is to deny arbitration of this particular claim. But

there is no reason to believe that the agency-law principles applied by the Kentucky court would in some systemic way frustrate the pro-arbitration policies of the FAA (and of Kentucky's own arbitration laws). Should Kentuckians perceive that it is in their interests to enter predispute arbitration agreements in situations such as those at issue here, they can easily authorize such agreements in powers of attorney, and the decision below recognizes that resulting arbitration agreements would be enforceable under both the FAA and Kentucky law. To the extent, however, that such authorization is withheld, the FAA can provide no basis for effectively requiring that it be provided. Fear that people may not voluntarily assent to allow arbitration agreements to be entered into on their behalves is no reason for forcing them to arbitrate against their expressed wishes under a statute whose premise is that arbitration is a "matter of consent, not coercion." *Volt*, 489 U.S. at 479.

The suggestion that the Kentucky court's agency analysis is an intolerable obstacle to the objectives of the FAA also overlooks that this Court itself has found plain-statement requirements to be *implicit in federal law* where necessary to avoid arbitration of matters that parties would not reasonably have thought would be subject to arbitration. In *Wright v. Universal Maritime Service Corp.*, for example, the Court held that an arbitration agreement negotiated on a worker's behalf by his collective bargaining representative could not require arbitration of federal statutory claims absent a "clear and unmistakable" provision requiring arbitration. 525 U.S. 70, 80 (1998). The Court reasoned that the "right to a judicial forum" was of "sufficient importance" that the Court could not "infer from a general contractual provision" an intent to waive it. *Id.* The Court's subsequent decision in *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 258–59 (2009),

reaffirmed *Wright* and made plain that its clear-statement requirement for collective-bargaining-agreement waivers of judicial forums for statutory claims was consistent with the FAA, which the Court held to be applicable to arbitration requirements in collective bargaining agreements.

Similarly, in a line of decisions including *First Options*, 514 U.S. at 944, *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002), and *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 78 (2010), the Court has held that agreements to arbitrate questions of arbitrability must be "clear and unmistakable" to be enforced, even though such agreements fall within the scope of the FAA's prescription that "written provisions" to arbitrate disputes are enforceable. *See Rent-A-Center*, 561 U.S. at 70–71. The Court imposed this requirement to give effect to the FAA's central policy of consent, because absent a clear and unmistakable agreement to arbitrate arbitrability, compelling arbitration of such issues could "force unwilling parties to arbitrate a matter they reasonably would have thought a judge, not an arbitrator, would decide." *First Options*, 514 U.S. at 945.

These decisions illustrate that, although it incorporates policies favoring arbitration, the FAA—like legislation generally—does not "pursue[] its purposes at all costs." *Rodriguez v. United States*, 480 U.S. 522, 525–26 (1987). More particularly, they illustrate that when the policy of advancing arbitration collides with the policy of protecting parties against arbitrating when they never consented to do so, the latter policy prevails, and may justify adoption of interpretive principles designed to protect parties' reasonable expectations that they will not be coerced to arbitrate against their will.

The Kentucky Supreme Court's decision, of course, did not require anything close to the unmistakable clarity required by this Court in the circumstances of *Wright* and *First Options*. The point is simply that those decisions underscore that there is nothing fundamentally contrary to the FAA's policies in the Kentucky court's relatively modest holding that agency law principles do not permit the inference that a particular individual intended to confer power to agree to arbitration under a generally worded power of attorney that was silent on the subject. Rather, the court's holding is fully consistent with the FAA's fundamental principle of consent and its corollary that "unwilling parties" should not be forced to arbitrate in circumstances where they "reasonably would have thought" they had not expressed assent to arbitrate. *First Options*, 514 U.S. at 945.

Kindred's view of implied preemption in this case reflects a mistake common to expansive obstacle-preemption arguments: Kindred's attempt "to divine the broader purposes of the statute before it inevitably leads it to assume that Congress wanted to pursue those policies 'at all costs'—even when the text reflects a different balance." *Wyeth v. Levine*, 555 U.S. at 601 (Thomas, J., concurring in the judgment). So, here, Kindred's arguments elevate the FAA's pro-arbitration policies over its fundamental principle of consent, and thereby seek to bootstrap the Act's requirements that contracts be enforced into regulations of a state's application of principles governing the scope of an agent's authority to contract. A more complete understanding of the Act's purposes and policies, as well as the limitations of its textual commands, requires the conclusion that Kindred's implied preemption argument falls far short of demonstrating a manifest congressional intent to preempt the decisional principles applied below.

CONCLUSION

This Court should affirm the judgment of the Supreme Court of Kentucky.

Respectfully submitted,

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